



Billing Code 9111-14

## **DEPARTMENT OF HOMELAND SECURITY**

### **Office of the Secretary**

#### **Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, As Amended**

**AGENCY:** Office of the Secretary, Department of Homeland Security.

**ACTION:** Notice of determination.

**SUMMARY:** The Acting Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border in Starr County, Texas, Hidalgo County, Texas, and Cameron County, Texas.

**DATES:** This determination takes effect on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

#### **SUPPLEMENTARY INFORMATION:**

Important missions of the Department of Homeland Security (“DHS”) include border security and the detection and prevention of illegal entry into the United States. Border security is critical to the nation’s national security. Recognizing the critical importance of border security, Congress has mandated DHS to achieve and maintain operational control of the international land border. Secure Fence Act of 2006, Public Law 109-367, § 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. § 1701 note). Congress defined “operational control” as the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, and instruments of terrorism, narcotics, and other contraband. *Id.* Consistent with that mandate from Congress, the President’s Executive Order on Border Security and Immigration

Enforcement Improvements directed executive departments and agencies to deploy all lawful means to secure the southern border. Executive Order 13767, § 1. In order to achieve that end, the President directed, among other things, that I take immediate steps to prevent all unlawful entries into the United States, including the immediate construction of physical infrastructure to prevent illegal entry. Executive Order 13767, § 4(a).

Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out DHS's border security mission. One of those authorities is section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended ("IIRIRA"). Public Law 104-208, Div. C, 110 Stat. 3009-546, 3009-554 (Sept. 30, 1996) (8 U.S.C. § 1103 note), as amended by the REAL ID Act of 2005, Public Law 109-13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. § 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109-367, § 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. § 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110-161, Div. E, Title V, § 564, 121 Stat. 2090 (Dec. 26, 2007). In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress mandated the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

## **DETERMINATION AND WAIVER:**

### **Section 1**

The United States Border Patrol's (Border Patrol) Rio Grande Valley Sector is an area of high illegal entry. Between October 1, 2018, and August 31, 2019, the Border Patrol apprehended over 325,000 illegal aliens attempting to enter the United States between border crossings in the Rio Grande Valley Sector. In that same time period, the Border Patrol had over 900 separate drug-related events between border crossings in the Rio Grande Valley Sector, through which it seized over 112,000 pounds of marijuana, over 2,300 pounds of cocaine, over 90 pounds of heroin, and over 1,600 pounds of methamphetamine.

Owing to the high levels of illegal entry within the Rio Grande Valley Sector, I must use my authority under section 102 of IIRIRA to install additional physical barriers and roads in the Rio Grande Valley Sector. Therefore, DHS will take immediate action to construct barriers and roads. The areas in the vicinity of the border within which such construction will occur are more specifically described in Section 2 below. Such areas are not located within any of the areas identified in sections 231 and 232(c) of title II of division A of the Fiscal Year 2019 DHS Appropriations Act. *See* Public Law 116-6, Div. A, Title II, §§ 231-232.

### **Section 2**

I determine that the following areas in the vicinity of the United States border, located in the State of Texas within the Border Patrol's Rio Grande Valley Sector, are areas of high illegal entry (the "project areas"):

- In Starr County, starting at the Falcon Dam Lake Spillway that is situated south of Falcon Dam and extending south and east to the western boundary of the census designated place of Salineno, Texas.

- In Starr County, starting at the southeast boundary of the census designated place of Salineno, Texas, and extending south to the northern boundary of the Las Ruinas Tract of the Lower Rio Grande Valley National Wildlife Refuge.
- In Starr County, starting at the southern boundary of the Las Ruinas Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending south and east to the western boundary of the Arroyo Ramirez Tract of the Lower Rio Grande Valley National Wildlife Refuge.
- In Starr County, starting at the northeast boundary of the Arroyo Ramirez Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending east and south for approximately one (1) mile.
- In Starr County, starting at the eastern boundary of the city limits of Escobares, Texas, and moving east and south to the western boundary of the city limits of Rio Grande City, Texas.
- In Starr County, starting approximately one-half (0.5) of a mile southwest of the intersection of Los Velas Road and U.S. Highway 83 and extending east and south for approximately 11 miles.
- In Starr County and Hidalgo County, starting approximately one and two-tenths (1.2) of a mile northwest of the Starr County and Hidalgo County line and extending east to the eastern boundary of the Penitas West Tract of the Lower Rio Grande Valley National Wildlife Refuge.

- In Hidalgo County, starting at the eastern boundary of the Marinoff Tract of the Lower Rio Grande National Wildlife Refuge and extending west for approximately one-half (0.5) of a mile.
- In Hidalgo County, starting immediately north of the northeast boundary of the Santa Ana National Wildlife Refuge and extending west for approximately three-tenths (0.3) of a mile.
- In Hidalgo County and Cameron County, starting at the eastern boundary of the Mercedes Settling Basin and extending north and east in proximity to the International Boundary and Water Commission (IBWC) levee to approximately two-tenths (0.2) of a mile southeast of the point at which Torres Road intersects with the IBWC levee.
- In Cameron County, starting at the southwest boundary of the Philip Banco Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending south and east approximately three (3) miles.
- In Cameron County starting approximately a one-quarter (0.25) of a mile southwest of the Brownsville and Matamoros International Bridge and extending northeast along the Rio Grande River for approximately one-half (0.5) of a mile.
- In Cameron County, starting approximately two-tenths (0.2) of a mile north and west of the point at which International Boulevard crosses the Rio Grande River and extending south and east in proximity to the IBWC levee for approximately three (3) miles.

There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into

the United States in the project areas pursuant to sections 102(a) and 102(b) of IIRIRA. In order to ensure the expeditious construction of the barriers and roads in the project areas, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of roads and physical barriers (including, but not limited to, accessing the project areas, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project areas, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended: The National Environmental Policy Act (Pub. L. 91-190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 et seq.)); the Endangered Species Act (Pub. L. 93-205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 et seq.)); the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (33 U.S.C. 1251 et seq.)); the National Historic Preservation Act (Pub. L. 89-665, 80 Stat. 915 (Oct. 15, 1966), as amended, repealed, or replaced by Pub. L. 113-287, 128 Stat. 3094 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 470 et seq., now codified at 54 U.S.C. 100101 note and 54 U.S.C. 300101 et seq.)); the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.); the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.); the Clean Air Act (42 U.S.C. 7401 et seq.); the Archeological Resources Protection Act (Pub. L. 96-95, 93 Stat. 721 (Oct. 31, 1979) (16 U.S.C. 470aa et seq.)); the Paleontological Resources Preservation Act (16 U.S.C. 470aaa et seq.); the Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4301 et seq.); the Safe Drinking Water Act (42 U.S.C. 300f et seq.); the Noise Control Act (42 U.S.C. 4901 et

seq.); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.); the Archaeological and Historic Preservation Act (Pub. L. 86-523, 74 Stat. 220 (June 27, 1960) as amended, repealed, or replaced by Pub. L. 113-287, 128 Stat. 3094 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 469 et seq., now codified at 54 U.S.C. 312502 et seq.)); the Antiquities Act (formerly codified at 16 U.S.C. 431 et seq., now codified 54 U.S.C. 320301 et seq.); the Historic Sites, Buildings, and Antiquities Act (formerly codified at 16 U.S.C. 461 et seq., now codified at 54 U.S.C. 3201-320303 & 320101-320106); the Farmland Protection Policy Act (7 U.S.C. 4201 et seq.); the Federal Land Policy and Management Act (Pub L. 94-579, 90 Stat. 2743 (Oct. 21, 1976) (43 U.S.C. 1701 et seq.)); the National Wildlife Refuge System Administration Act (Pub. L. 89-669, 80 Stat. 926 (Oct. 15, 1966) (16 U.S.C. 668dd-668ee)); National Fish and Wildlife Act of 1956 (Pub. L. 84-1024, 70 Stat. 1119 (Aug. 8, 1956) (16 U.S.C. 742a, et seq.)); the Fish and Wildlife Coordination Act (Pub. L. 73-121, 48 Stat. 401 (March 10, 1934) (16 U.S.C. 661 et seq.)); the National Trails System Act (16 U.S.C. 1241 et seq.); the Administrative Procedure Act (5 U.S.C. 551 et seq.); the Rivers and Harbors Act of 1899 (33 U.S.C. 403); the Coastal Zone Management Act (Pub. L. 92-583 (16 U.S.C. 1451 et seq.)); the Eagle Protection Act (16 U.S.C. 668 et seq.); the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.); and the American Indian Religious Freedom Act (42 U.S.C. 1996).

This waiver does not revoke or supersede the previous waivers published in the Federal Register on April 8, 2008 (73 FR 19077 and 73 FR 19078), October 10, 2018 (83 FR 50949), October 11, 2018 (83 FR 51472), July 1, 2019 (84 FR 31328), August 30, 2019 (84 FR 45787), and October 1, 2019 (84 FR 52118), which shall remain in full force and effect in accordance

with their respective terms. I reserve the authority to execute further waivers from time to time as I may determine to be necessary under section 102 of IIRIRA.

Dated: October 23, 2019

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Kevin K. McAleenan,  
*Acting Secretary of Homeland Security*  
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